

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

ADDRESS REPLY TO:

P.O. Box 420603
San Francisco, CA 94142
(415) 703-5050
FAX No.: (415) 703-5058

June 30, 1999

William Dean Smith
Senior Deputy Counsel
Office of County Counsel
City of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469

Re: *Public Works Case No. 99-028*
County of San Diego Road Maintenance

Dear Mr. Smith:

This is in response to your letter dated February 11, 1999 requesting a public works coverage determination for a road maintenance project in the County of San Diego. Based upon my review of the relevant facts as presented and the applicable law, I have determined that the above-referenced project is a public works subject to the requirement to pay prevailing wages.

The County of San Diego Department of Public Works ("County") has stated its intention to conduct a "managed competition" for road maintenance and repair work currently performed by County employees. In the competition, private sector firms will be asked to bid against a team of County employees for the opportunity to perform the work.

Initially, the Department was provided with the descriptions of eighteen road maintenance tasks under the proposed contract. In a follow-up letter to the Department dated March 3, 1999, the County modified its original request by withdrawing from consideration five of the eighteen tasks.

The remaining thirteen tasks subject to the Department's consideration can be broken down into the following categories:

- (I) Field Inspection/Investigation
 - #1 - Tree Inspection
 - #2 - Complaint Investigation
 - #3 - Field Review/Inspection
 - #11 - Drainage Facility Inspection

- (II) Roadway Cleaning
 - #5 - Street Sweeping
 - #6 - Litter Collection
 - #7 - Sand/Debris Removal
- (III) Drain/Culvert Cleaning/Clearing
 - #8 - Clean Drain Structures
 - #9 - Clean Open Channels
 - #10 - Clean Culvert Inlets
 - #14 - Flushing Culverts
- (IV) Other
 - #4 - Place/Remove Barricades
 - #16 - Roadside Mowing

Labor Code section 1771 specifies that the prevailing wage law applies to contracts let for maintenance work. Maintenance is described under Title 8, California Code of Regulations, section 16000. Under the regulation, maintenance includes:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility . . . for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.
- (2) Carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

EXCEPTION: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

EXCEPTION: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

- (3) Landscape maintenance. See Public Contract Code section 21002.¹

¹ In 1986, this statute was amended and renumbered as 22002. All further references to this code section will be referred to as Public Contracts Code section 22002.

The central issue to determine is whether the work constitutes a public works, in particular whether the tasks described constitute maintenance.

Turning to the tasks, those grouped under the designation (II) "Roadway Cleaning" fit within the definition of maintenance. The tasks involve cleaning roads with a street sweeper, manually picking garbage up off the roads with a hand picker and plastic bags, and removing sand, mudslides, vegetative debris deposited in the roads by weather-related phenomenon with a loader, grader and ramp trailer. These are routine, recurring and usual tasks intended to keep the roads in a safe and continually usable condition.

The tasks grouped under the designation (III) "Drain/Culvert Cleaning/Clearing" also fit within the definition of maintenance. The tasks involve clearing, cleaning and flushing culverts and drainage channels, inlets and outlets. These are routine, recurring and usual tasks intended to provide adequate transport of storm water through drainage facilities and to ensure proper drainage and, in so doing, to keep the drains and culverts in a safe and continually usable condition.

The task of "Roadside Mowing" is performed to control fire hazards and provide adequate sight distance. Public Contracts Code section 22002(d)(4) includes within landscape maintenance the following: "Mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems." The "Roadside Mowing" task involves mowing and trimming and squarely fits within the definition of maintenance.

While there are some tasks in the overall project that, in and of themselves, may not be deemed maintenance work,² they also require the payment of prevailing wages because they are performed in the execution of the maintenance work. Labor Code section 1772. Furthermore, employees working under the single contract for maintenance work will not be assigned individual tasks; any employee may be called upon to perform tasks according to need.³ As such, I find the entire project to be covered as maintenance under Labor Code section 1771.

Your letter refers to public works coverage determinations of the previous Director of Industrial Relations. Please note that by law only the recently designated Precedential Public Works Coverage Decisions may be cited and relied upon in analyzing whether a particular project is a public works. Accordingly, as the decisions you cite have not been designated precedential, they are of no force and effect. A copy of the Precedential Public Works Decisions can be obtained by writing to the Division of

² These might include: field inspection/investigation and placement/removal of barricades.

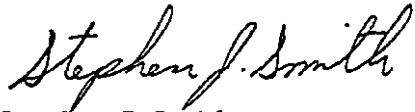
³ Confirmed in a telephone conversation with Larry Watt, Deputy Director of Public Works, Transportation Division, on April 20, 1999.

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Labor Standards and Research, 455 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102.

I hope this adequately responds to your request.

Sincerely,



Stephen J. Smith
Director

cc: Marcy Saunders, Labor Commissioner
Division of Labor Standards Enforcement
Henry P. Nunn, III, Chief
Division of Apprenticeship Standards
Maria Robbins, Deputy Chief
Division of Labor Statistics and Research
Vanessa L. Holton, Asst. Chief Counsel
Office of the Director, Legal Unit